

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE DIET DRUGS  
(PHENTERMINE/FENFLURAMINE/  
DEXFENEFURAMINE) PRODUCTS  
LIABILITY LITIGATION

MDL DOCKET NO. 1203

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MARIE N. MITCHELL, AVIS YVONNE LUCAS,  
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PHILLIP GILLIAM, REBECCA CARLISLE,  
LINDA J. WHITE, BRENDA A. GREEN,  
BEVERLY ANN YOUNG, LISA JOHNSON,  
AND PHYLLIS EVANS

PLAINTIFFS

VS.

MDL CIVIL ACTION NO. 02-20081

WYETH-AYERST PHARMACEUTICALS, INC.,  
f/k/a Wyeth-Ayerst Laboratories, Inc.,  
a division of American Home Products, Inc.;  
WYETH LABORATORIES, INC.,  
A. H. ROBINS COMPANY, INC.;  
AMERICAN HOME PRODUCTS, INC.;  
ROY SMITH d/b/a STARKVILLE DISCOUNT DRUGS;  
WAL-MART ASSOCIATES, INC.;  
MCR PHARMACEUTICALS INC., a/k/a American  
Pharmaceuticals, Inc., a/k/a MCR/American  
Pharmaceuticals, Inc.; JONES MEDICAL  
INDUSTRIES, a/k/a Abana Pharmaceuticals, Inc.;  
QUALITEST PRODUCTS, INC.; EON LABS  
MANUFACTURING, INC.; FISONS CORPORATION;

GATE PHARMACEUTICALS; INTERNEURON  
PHARMACEUTICALS, INC.; MEDEVA  
PHARMACEUTICALS, INC.; RUGBY  
LABORATORIES, INC.; SMITHKLINE  
BEECHAM CORPORATION; SEALE DRUG CO., INC.;  
G & M OF OXFORD, INC.; MID-TOWN DISCOUNT  
DRUGS; MAJIC MART PHARMACY, INC., FRED'S INC.;  
TYSON DRUGS, INC.; and GOLDLINE LABORATORIES, INC.,  
a division of IVAX Corporation

DEFENDANTS

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**MOTION FOR LEAVE OF COURT TO DESIGNATE EXPERTS**

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Plaintiffs Janice Binion, et al. file this motion for leave of court to designate generic experts as follows:

1. The discovery initiation date in this case was June 1, 2002. When Plaintiffs were notified of the discovery initiation date and the requirement for the submission of Plaintiffs' fact sheets, Plaintiffs' counsel and Plaintiffs began concentrating their efforts on completing the Plaintiffs' fact sheets, and medical authorizations. In light of the large number of Plaintiffs in this case and related MDL 1203 cases handled by Plaintiffs' counsel, this took a considerable amount of time since many of the Plaintiffs in each case had relocated, and many Plaintiffs needed considerable assistance in preparing the Plaintiffs' fact sheets. As a result, Plaintiffs' counsel's time and resources were consumed by their efforts to complete and provide the numerous Plaintiffs' fact sheets and medical authorizations in this case.

2. As a result, Plaintiffs did not designate generic experts before the deadline of June 1, 2002. While not offering it as a complete excuse for the failure to designate experts, Plaintiffs note that the copy of Pre-Trial Order No. 2356 which was included in the numerous documents provided to Plaintiffs' counsel when this case was transferred to the Multi-District Litigation did not include the chart of rolling due dates applicable to this case. As soon as Plaintiffs' counsel became aware of the applicable chart of rolling due dates for this case, counsel began its review and

preparation of Plaintiffs' proposed designation of generic experts. Attached to this motion is Plaintiffs' designation of generic experts which the Plaintiffs request that the court permit them to file. (Exhibit "A").

3. The Plaintiffs' delay in designating these expert witnesses was not made in bad faith and was not made with the purpose of causing any undue delay in these proceedings. Plaintiffs submit that this case is still in the early stages of discovery since the parties are still in the process of obtaining the applicable medical records, and no depositions have been scheduled at this time. Additionally, Plaintiffs submit that Defendants would not be unduly prejudiced by the Plaintiffs' delay in designating the generic experts since Defendants have long been in possession of these particular experts' reports. Plaintiffs would not have any objection if Defendants need additional time to designate generic or case specific experts in response to Plaintiffs' designation.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that the Court grant Plaintiffs leave to designate the generic experts listed in Exhibit "A".

RESPECTFULLY SUBMITTED this the \_\_\_\_\_ day of August, 2002.

JANICE BINION, ALBERT TAYLOR, S. GWEN HARVIEL, MITZI M. ALLEN, MARIE N. MITCHELL, AVIS YVONNE LUCAS, ALISHA D. ROSE, MIKE COWELL, JEANNE COWELL, ANTHONY EARL SYKES, PHONECIA S. WILSON, WILLIAM PEYTON SMITH, STEPHANIE OWENS, DEBBIE TURNEY-MILLER, LORI HARRIS, GAIL LYNN HUDSON DOUGLAS, KEITH PAUL HACHTEL, ANNE S. ELLIS, LADYE J. DURDIN, TERRY JOHNSON, BARBARA J. HENRY, ROBERT MCDANIEL, JR., TRACY ADAMS, FRANCES P. MCLURE, LIZETTE PURNELL, AGNES TOLLIVER, KIMBERLY B. BOONE, MELISSA E. WESTBROOK, DONNA MALONE, ESTELLA KING, ESSIE L ARCHIE, EDDIE H. BUSBY, EULA RICHARDSON, SHIRLEY SHAW, ELAINE STEWARD, MEREDITH A. KINSEY, BEVERLY J. FLEMING, SHEILA BUSH, GARRY JOE GIRDLEY, PHILLIP GILLIAM, REBECCA CARLISLE, LINDA J. WHITE, BRENDA A. GREEN,

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CERTIFICATE OF SERVICE

This is to certify that I have this day mailed a true and correct copy of the above and foregoing Motion for Leave of Court to Designate Experts, postage prepaid, by means of United States Mail to the following counsel of record:

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This the \_\_\_\_\_ day of August, 2002.

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